

**SETTLEMENT AGREEMENT**  
**BETWEEN**  
**OFFICE OF ENDOWED CARE CEMETERIES**  
**AND**  
**MT. HOPE CEMETERY ASSOCIATION**

Mt. Hope Cemetery Association ("Mt. Hope") and the Office of Endowed Care Cemeteries ("the Office") enter into this Settlement Agreement for the purpose of resolving the question of whether Mt. Hope's license as an Endowed Care Cemetery, no. 2000172532, will be subject to discipline. Pursuant to § 536.060, RSMo 2000,<sup>1</sup> the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri and, additionally, the right to a disciplinary hearing before the Office under § 621.110, RSMo. The Office and Mt. Hope jointly stipulate and agree that a final disposition of this matter may be effectuated as described below pursuant to § 621.045, RSMo, Cum. Supp. 2006.

Mt. Hope acknowledges that it understands the various rights and privileges afforded it by law, including the right to a hearing of the charges against it; the right to appear and be represented by legal counsel; the right to have all charges proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing against it at the hearing; the right to present evidence on its behalf at the hearing; the right to a decision upon the record of the hearing by a fair and impartial

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<sup>1</sup> All statutory citations are to the 2000 Revised Statutes of Missouri unless otherwise noted.

administrative hearing commissioner concerning the charges pending against it; the right to a ruling on questions of law by the Administrative Hearing Commission; the right to a disciplinary hearing before the Office at which time Mt. Hope may present evidence in mitigation of discipline; the right to a claim for attorney fees and expenses; and the right to obtain judicial review of the decisions of the Administrative Hearing Commission and the Office.

Being aware of these rights provided to it by law, Mt. Hope knowingly and voluntarily waives each and every one of these rights and freely enters into this Settlement Agreement and agrees to abide by the terms of this document as they pertain to it.

Mt. Hope acknowledges that it has received a copy of documents that were the basis upon which the Office determined there was cause for discipline, along with citations to law and/or regulations the Office believes were violated. Mt. Hope stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the Office that Mt. Hope's license as an Endowed Care Cemetery, license no. 2000172532, would be subject to disciplinary action by the Office if violations are found in accordance with the relevant provisions of Chapter 621, RSMo Cum. Supp. 2006, and Chapter 214, RSMo, as amended.

The parties stipulate and agree that the disciplinary order agreed to by the Office and Mt. Hope in Part II herein is based only on the agreement set out in Part I herein.

**I.**  
**Joint Stipulation of Facts and Conclusions of Law**

Based upon the foregoing, the Office and Mt. Hope herein jointly stipulate to the following:

**Findings of Fact**

1. The Division is an agency of the state of Missouri that has been vested with the powers and duties to enforce and implement the Cemetery Endowed Care Fund Law, Sections 214.270 through 214.410, RSMo.<sup>2</sup>
2. Respondent, Mount Hope Cemetery Association ("MHCA"), is a Missouri corporation which holds License No. 2000172532 as an Endowed Care Cemetery.
3. Jurisdiction and venue are proper before the Administrative Hearing Commission pursuant to § 621.045, RSMo, and § 214.276.2, RSMo.
4. MHCA owns and operates an endowed care cemetery, Mount Hope Cemetery, which is located at 3700 North Rangeline Road, Webb City, Missouri 64870.
5. Section 214.320.3, RSMo, states in part:  
  
Each operator of an endowed care cemetery shall, after August 28, 1990, file with the division of professional registration, on a form provided by the division, an annual endowed care trust fund report. The operator of any cemetery representing the cemetery, or any portion of the cemetery, as an endowed care cemetery shall make available to the division for inspection or audit at any reasonable time only those cemetery records and trust fund records necessary to determine whether the cemetery's endowed care fund is in compliance with sections 214.270 to 214.410...

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<sup>2</sup> All statutory citations are to the 2000 Revised Statutes of Missouri unless otherwise noted.

6. Section 214.325.1, RSMo, states in part:

If the deposits to any endowed care fund required by sections 214.270 to 214.410 are less than the total sum required to be set aside and deposited since the effective date of such sections, the cemetery operator shall correct such deficiency by depositing not less than twenty percent of such deficiency each year for five years following August 28, 1990, and shall file, on the form provided by the division, a statement outlining the date and amount such deposits were made. If the cemetery operator fails to correct the deficiency, the cemetery operator shall thereafter not represent the cemetery as an endowed care cemetery. Any funds held in the cemetery's endowed care trust shall continue to be used for endowed care for that cemetery. ...

7. Section 214.330.1, RSMo, states in part,

The endowed care fund required by sections 214.270 to 214.410 shall be permanently set aside in trust or in accordance with the provisions of subsection 2 of this section. . . . The income from the endowed care fund shall be distributed to the cemetery operator at least annually or in other convenient installments. .... The principal of such funds shall be kept intact and appropriately invested by the trustee, or the independent investment advisor.

8. Section 214.330.4, RSMo, states in part, "All endowed care funds shall be administered in accordance with an endowed care fund agreement."

9. MHCA maintains an Endowed Care trust account with US Bank, NA.

10. Prior to September 1, 2005, this account was maintained under the terms of a Trust Agreement between MHCA and Joplin National Bank and Trust Company dated December 31, 1931 ("1931 Agreement").

11. The 1931 Agreement was silent on the question of whether capital gains on trust fund investments were to be treated as income or principal.

12. Pursuant to its statutory responsibilities, the Division has periodically caused audits of MHCA's endowed care account performed to ascertain whether it has been operated in compliance with Section 214.320.1 and Section 214.330, RSMo.

13. The accounting firm of McBride, Lock, and Associates performed an audit on activity in MHCA's endowed care trust account during the period from January 1, 2000, through December 31, 2004. This audit was transmitted to the Division with a cover letter dated May 11, 2005.

14. The auditors noted that a prior audit had found that the opening balance of the trust fund on January 1, 2000, should have been \$609,306.

15. The auditors found that at the beginning of the audit period on January 1, 2000, the trust fund held a balance of \$602,780, resulting in an unfavorable variance of \$6,526.

16. The auditors recommended that MHCA make an immediate contribution of \$6,526 to replenish the deficiency.

17. The audit showed that in each year from 2000 through 2004, the trustee had made distributions of funds representing capital gains earned by the principal as income. The amounts of capital gains distributed as income were as follows:

2000	\$ 46,401
2001	136,913
2002	73,582
2003	98,159

2004	41,373
Total	\$396,428

18. The auditors accordingly recommended that MHCA make an immediate contribution of \$221,333 to replenish the trust account.

19. Mt. Hope does not have funds available to make a contribution to the trust account which would replenish the amounts taken out.

20. From January 1, 2000, until September 1, 2005, MHCA's conduct was governed by the 1931 Agreement, which was silent as to whether the Trustee could treat capital gains as income.

21. On September 1, 2005, MHCA executed a new Trust Agreement with US Bank NA, successor in interest to Joplin National Bank and Trust Company. This agreement contained a clause defining "income" to include capital gains on assets.

### **Conclusions of Law**

1. By using the proceeds on the sale of capital gains as income when its trust was silent on the issue, the office contends that Mt. Hope violated the following statutory duties:

- a. Its duty under Section 214.330.1, RSMo, to keep the principal of its endowed care fund intact.

b. Its duty under Section 214.330.4, RSMo, to administer all endowed care funds in accordance with its endowed care fund agreement; and

c. Its duty under Section 214.325.1, RSMo, to “correct such deficiency by depositing not less than twenty percent of such deficiency each year for five years.”

2. While Mt. Hope does not acknowledge that it violated the statute or intended to violate the statute, Mt. Hope acknowledges that the allegations could support a finding of cause for discipline under the terms of Section 214.276.2(6), which provides that discipline may be imposed on a licensee for “violation of . . . any provision of sections 214.270 to 214.516.”

## II. Joint Agreed Disciplinary Order

Based on the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the Office in this matter under the authority of §§ 536.060, 621.045.3, and 621.110, RSMo.

1. **Mt. Hope's license is on probation.** Mt. Hope's license as an Endowed Care Cemetery is hereby placed on PROBATION for a period of FIVE YEARS. The period of probation shall constitute the “disciplinary period.” During the disciplinary period, Mt. Hope shall be entitled to the status of an Endowed Care Cemetery under

Chapter 214, RSMo, as amended, provided Mt. Hope adheres to all the terms of this agreement.

2. **Terms and conditions of the disciplinary period.** The terms and conditions of the disciplinary period are as follows:

- a. Mt. Hope shall cease the practice of applying the proceeds of sales of capital assets to income after the date its representative signs this Agreement.
- b. Mt. Hope shall file quarterly reports showing that it has preserved all capital gains and has not applied such funds to distribution as income.
- c. Mt. Hope shall continue to account for capital gains as it has in the past, and the assets held in trust shall be invested consistent with that of a reasonably prudent investor, and shall not be invested in a manner so as to generate gains as dividends in circumvention of this Agreement.
- d. Within thirty (30) days after the effective date of this Agreement, Mt. Hope shall amend its Trust Agreement to remove the clause inserted in 2005, authorizing it to use capital gains on assets as income, and shall transmit a copy of the revised Trust Agreement to the Office.
- e. Mt. Hope shall pay all required fees for licensing to the Board and shall renew its license prior to October 31 of each licensing year.
- f. Respondent shall comply with all provisions of Chapter 214, RSMo, 20 Code of State Regulations Division 2065, Endowed Care Cemeteries, and



all applicable federal and state laws, rules and regulations. "State" here includes the State of Missouri and all other states and territories of the United States.

- g. If, after disciplinary sanctions have been imposed, the Respondent fails to keep its license current, the period of unlicensed status shall not be deemed or taken as any part of the time of discipline so imposed.
- h. Respondent's failure to comply with any condition of discipline set forth herein constitutes a violation of this disciplinary Order/Agreement.

3. Upon the expiration of the disciplinary period, the license of Mt. Hope shall be fully restored if all requirements of law have been satisfied.

4. No additional discipline shall be imposed by the Office pursuant to the preceding paragraph of this Settlement Agreement without notice and opportunity for hearing before the Office as a contested case in accordance with the provisions of Chapter 536, RSMo.

5. This Settlement Agreement resolves all issues regarding Mt. Hope's use of the proceeds of the sale of capital assets through the date of signature of the agreement, and the Office advises that there are no other issues the Office intends to raise based on audits to date.

6. This Settlement Agreement does not bind the Office or restrict the remedies available to it concerning any future violations by Mt. Hope of Chapter 214, RSMo, as

amended, or the regulations promulgated thereunder, or of the terms and conditions of this Settlement Agreement.

7. This Settlement Agreement does not bind the Office or restrict the remedies available to it concerning facts or conduct not specifically mentioned in this Settlement Agreement that are either now known to the Office or may be discovered. While the issue of the use of the proceeds of the sale of capital assets through the date of signature of the agreement is resolved, the Office reserves the right to conduct audits covering time periods after 2006, which audits may carry over or incorporate information from audits done in the past. The Office reserves the right to pursue issues, other than the use of capital proceeds, that may arise from such audits incorporating information carried over from past audits.

8. If any alleged violation of this Settlement Agreement occurred during the disciplinary period, the parties agree that the Office may choose to conduct a hearing before it either during the disciplinary period, or as soon thereafter as a hearing can be held, to determine whether a violation occurred and, if so, may impose further disciplinary action. Mt. Hope agrees and stipulates that the Office has continuing jurisdiction to hold a hearing to determine if a violation of this Settlement Agreement has occurred.

9. Each party agrees to pay all their own fees and expenses incurred as a result of this case, its litigation, and/or its settlement.

10. The terms of this Settlement Agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise contained herein,

neither this Settlement Agreement nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

11. The parties to this Settlement Agreement understand that the Office will maintain this Settlement Agreement as an open record of the Office as required by Chapters 214 and 610, RSMo, as amended.

12. Mt. Hope, together with its partners, shareholders, officers, directors, heirs, assigns, agents, employees, representatives and attorneys, does hereby waive, release, acquit and forever discharge the Office, its respective members, employees, agents and attorneys including former members, employees, agents and attorneys, of, or from any liability, claim, actions, causes of action, fees, costs, expenses and compensation, including, but not limited to, any claim for attorney's fees and expenses, whether or not now known or contemplated, including, but not limited to, any claims pursuant to § 536.087, RSMo (as amended), or any claim arising under 42 U.S.C. § 1983, which now or in the future may be based upon, arise out of, or relate to any of the matters raised in this case or its litigation or from the negotiation or execution of this Settlement Agreement. The parties acknowledge that this paragraph is severable from the remaining portions of the Settlement Agreement in that it survives in perpetuity even in the event that any court or administrative tribunal deems this agreement or any portion thereof void or unenforceable


13. Mt. Hope asserts and recites that it has not changed its procedures regarding the handling of capital assets proceeds during the pendency of this administrative proceeding.

14. Upon the effective date of this Settlement Agreement, the Office will voluntarily dismiss the proceeding brought before the Administrative Hearing Commission in No. 08-933 XX.

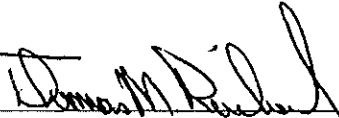
15. This Settlement Agreement goes into effect 15 days after the document is signed by the Executive Director of the Office.

LICENSEE

OFFICE OF ENDOWED CARE  
CEMETERIES

  
Mt. Hope Cemetery Association

Date: 12/18/09

  
Thomas Reichard, Executive Director

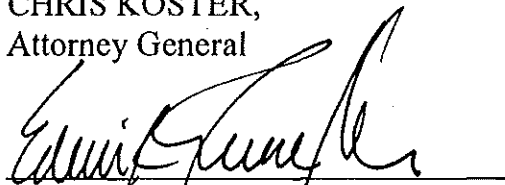
Date: 1-8-10

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